

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ANTHONY F., by and through his next
friends, EDWARD F. and LISA F.,
LINDA S. AND DEANE S.,

Plaintiffs,

v.

SCHOOL COMMITTEE of the CITY of
MEDFORD,

Defendant.

C.A. No. 04-10610-RWZ

**RENEWED MOTION TO AMEND ORDER
TO ALLOW APPLICATION FOR IMMEDIATE APPEAL**

Pursuant to 29 U.S.C. §1292(b), the School Committee of the City of Medford ("Medford"), hereby renews its motion (docket #19) filed June 1, 2005, asking the Court to amend that portion of the Memorandum of Decision dated April 22, 2005, which denies Medford's motion to dismiss the plaintiff's claim for fees related to the 2001-2002 IEP to provide the certification required to give the Court of Appeals jurisdiction to hear the appeal, that is, to state that the decision involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal may materially advance the ultimate termination of the litigation.

As grounds for renewing the motion, Medford states that: (1) on June 15, 2005, the Court of Appeals determined that it appeared it lacked jurisdiction to hear the appeal because of the absence of a 29 U.S.C. §1292(b) certification (a copy of the Court of Appeals' Order is attached hereto as Exhibit A and is incorporated herein by reference); (2) pursuant to the Court of Appeals' Order, the parties voluntarily agreed to dismiss the appeal *without prejudice* on June 28, 2005; (3) the First Circuit Court of Appeals ordered that the appeal be voluntarily dismissed

United States Court of Appeals For the First Circuit

N 17 2005

No. 05-1782

ANTHONY F., by and through his next friends, Edward
F. and Lisa F.

Plaintiff - Appellee

v.

SCHOOL COMMITTEE OF THE CITY OF MEDFORD

Defendant - Appellant

ORDER OF COURT

Entered: June 15, 2005

The defendant School Committee of the City of Medford filed a notice of appeal from a portion of an order entered on April 26, 2005 denying defendant's motion to dismiss one of plaintiff's claims in civil action no. 04-10610 (D. Mass.). Because the order appealed from does not appear to be a final order or an appealable interlocutory order, this court does not appear to have jurisdiction to review this appeal, absent certification pursuant to Fed. R. Civ. P. 54(b). See 28 U.S.C. §§ 1291, 1292.

Accordingly, the appellant is ordered either to move for voluntary dismissal of this appeal pursuant to Fed. R. App. P. 42(b), or to show cause, in writing, filed by **June 29, 2005**, why it should not be dismissed for lack of jurisdiction. The failure to take either action will lead to dismissal of the appeal for lack of diligent prosecution. See Loc. R. 3(b).

By the Court:
Richard Cushing Donovan, Clerk

By: LYNNE ALIX MORRISON
Appeals Attorney